



4410-31

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2018-01]

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The United States Parole Commission is revising its regulations to account for a membership of fewer than three Commissioners.

DATES: This regulation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Helen H. Krapels, General Counsel, U.S. Parole Commission, 90 K Street, N.E., Third Floor, Washington, D.C. 20530, telephone (202) 346-7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The Parole Commission is modifying its voting procedures to account for commissioner unavailability. The recommended modifications retain a

second Commissioner review procedure in cases where the first Commissioner voting on the case has a significant disagreement with the panel recommendation. The Commission is making these changes permanent even though its membership may be increased in the future.

With regard to the problem of resolving a tie vote, the rule revisions incorporate the principle that the consensus of all agency decision-makers in a given case, Commissioners and examiners, is best represented by the Commissioner's vote that is in agreement with the hearing examiner panel. If no Commissioner vote is in agreement with the hearing examiner panel, the vote that is the most favorable to the offender will be the Commission's decision.

The revision of §2.63 resolves split decisions for the variety of decisions found in the Commission's rules, including original jurisdiction cases, NAB appeals, and reopenings.

The revisions at §§2.68, 2.74, and 2.76, modify the present two-vote requirements in Transfer Treaty Determinations, D.C. parole decisions, and decisions to reduce the minimum term for D.C. Code offenders sentenced to parolable sentences by providing that these may be made by one Commissioner, with a second vote required only if the first Commissioner disagrees with the panel recommendation. A conforming amendment to the rule on miscellaneous provisions at 28 CFR 2.89 is also made. The Commission is publishing the revisions as final rules without seeking public comment because they are procedural in nature and do not establish any new substantive criteria for making parole or release decisions.

Executive Orders 12866 and 13563

These regulations have been drafted and reviewed in accordance with Executive Order 12866, "Regulation Planning and Review," section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, "Improving Regulation and Regulatory Review,"

section 1(b), General Principles of Regulation. The Commission has determined that these rules are not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly these rules have not been reviewed by the Office of Management and Budget.

Executive Order 13132

These rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

These rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

These rules will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E–Congressional Review Act)

None of these rules are a “major rule” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E–Congressional Review Act, now codified at 5 U.S.C. 804(2). These rules will not result in an annual effect on the economy of

\$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term “rule” as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U. S. Parole Commission adopts the following revisions to 28 CFR part 2:

PART 2 - [AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Revise § 2.63 to read as follows:

§2.63 Quorum and voting requirements.

- (a) A quorum of the Commission consists of the majority of those Commissioners holding office at the time an action is under consideration. Any action authorized by law may be decided by the majority vote of the Commissioners holding office at the

time the action is taken. Voting requirements in parole decision-making are established in other provisions of this part, including paragraphs (b) and (c) of this section.

(b)(1) In the event of a tie vote of the Commission's membership on an issue that requires the vote or authorization of the Commission, the issue that is the subject of the vote is not adopted by the Commission.

(2) If the matter that is the subject of the tie vote is whether to reopen or reconsider a previous decision of the Commission, the previous decision shall remain in effect. This includes decisions as to whether to rescind a parole date, to revoke parole or supervised release, or to grant parole after parole has been denied under 18 U.S.C. 4206(d).

(3) If the matter that is the subject of a tie vote is whether to grant parole at any initial hearing, 15-year reconsideration hearing, or DC Code rehearing, that decision shall be the Commissioner vote that is in agreement with the hearing examiner panel. If there is a tie vote and no commissioner agrees with the hearing examiner panel, then the decision will be the Commissioner's vote most favorable to the prisoner.

(4) If the matter that is the subject of the tie vote is whether to grant or deny release at the two-thirds date of the sentence per 18 U.S.C. 4206(d), or to terminate parole after the parolee has been on parole for 5 years per 18 U.S.C. 4211(c) and DC Code sec. 24-404(a-1)(3), the prisoner must be granted release under the statute or parole must be terminated respectively.

(5) If the matter that is the subject of a tie vote is a decision under appellate review per §2.26, if no concurrence is reached, the decision under appellate review shall be considered affirmed. This rule also applies to decisions under §2.17 to remove a case from the original jurisdiction of the Commission.

(6) The Commission may re-vote on a case disposition to resolve a tie vote or other impasse in satisfying a voting requirement of these rules.

(c) If there is only one Commissioner holding office, all provisions in these rules requiring concurring votes or resolving split decisions are suspended until the membership of the Commission is increased, and any action may be taken by one Commissioner.

3. Revise § 2.68(i)(1) to read as follows:

§2.68 Prisoners transferred pursuant to treaty.

* * * * *

(i) * * *

(1) The Commission shall render a decision as soon as practicable and without unnecessary delay. Upon review of the examiner panel recommendation, the Commissioner may make the decision by concurring with the panel recommendation. If the Commissioner does not concur, the Commissioner shall refer the case to another Commissioner and the decision shall be made on the concurring votes of two Commissioners. The decision shall set a release date and a period and conditions of supervised release. If the Commission determines that the appropriate release date under 18 U.S.C. 4106A is the full term date of the foreign sentence, the Commission will order the transferee to “continue to expiration.”

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4. Revise §2.74(c) to read as follows:

§2.74 Decision of the Commission.

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(c) All decisions may be made by one Commissioner, except that if the Commissioner does not concur with a panel recommendation, the case shall be referred to another Commissioner for a vote and the decision shall be based on the concurring votes of two Commissioners.

5. Revise §2.76(b) to read as follows:

§2.76 Reduction in minimum sentence.

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(b) A prisoner's request under this section may be approved on the vote of one Commissioner.

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6. Amend §2.89 by adding an entry for "2.63" in numerical order to read as follows:

§2.89 Miscellaneous provisions.

2.63 (Quorum)

Patricia K. Cushwa,
Chairman (Acting),
U.S. Parole Commission.

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